

HOUSE BILL NO. 2099

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on the Judiciary

on _____)

(Patron Prior to Substitute--Delegate Coyner)

A BILL to amend and reenact §§ 8.01-251, 8.01-458, and 55.1-339 of the Code of Virginia, relating to limitations on enforcement of judgments; judgment liens; settlement agents.

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-251, 8.01-458, and 55.1-339 of the Code of Virginia are amended and reenacted as follows:

§ 8.01-251. Limitations on enforcement of judgments.

A. No execution shall be issued and no action brought on a judgment dated prior to July 1, 2021, including a judgment in favor of the Commonwealth and a judgment rendered in another state or country, after 20 years from the date of such judgment or domestication of such judgment, unless the period is extended as provided in this section. No execution shall be issued and no action brought on a judgment dated on or after July 1, 2021, including a judgment in favor of the Commonwealth and a judgment rendered in another state or country, after ~~20~~ 10 years from the date of such judgment or domestication of such judgment, unless the period is extended as provided in this section.

B. ~~The limitation prescribed in subsection A may be extended on motion of the judgment creditor or his assignee with notice to the judgment debtor, and an order of the circuit court of the jurisdiction in which the judgment was entered to show cause why the period for issuance of execution or bringing of an action should not be extended. Any such motion shall be filed within the 20-year period from the date of the original judgment or from the date of the latest extension thereof. If upon the hearing of the motion the court decides that there is no good cause shown for not extending the period of limitation, the order shall so state and the period of limitation mentioned in subsection A shall be extended for an additional 20 years from the date of filing of the motion to extend. Additional extensions may be granted upon the~~

27 ~~same procedure, subject in each case to the recording provisions prescribed in § 8.01-458 by the~~
28 recording of a certificate in the form provided in subsection G prior to the expiration of the limitation
29 period prescribed herein in the clerk's office in which such judgment lien is recorded and executed by
30 either the judgment lien creditor or by his duly authorized attorney-in-fact or agent. Recordation of the
31 certificate shall extend the limitations of the right to enforce such judgment lien for 10 years from the date
32 of the recordation of the certificate. A judgment creditor may record one additional extension by recording
33 another certificate in the form provided in subsection G prior to the expiration of the original 10-year
34 extension of the limitation period, which shall extend the limitations of the right to enforce such judgment
35 lien for 10 years from the date of recordation of the second certificate. The clerk of the court shall index
36 the certificate in both names in the index of the judgment lien book and give reference to the book and
37 page in which the original lien is recorded. This extension procedure is subject to the exception that if the
38 action is against a personal representative of a decedent, the motion shall be within two years from the
39 date of his qualification, the extension may be for only two years from the time of the ~~filing of the motion~~
40 recordation of the certificate, and there may be only one such extension.

41 C. No suit shall be brought to enforce the lien of any judgment, including judgments in favor of
42 the Commonwealth, upon which the right to issue an execution or bring an action is barred by other
43 subsections of this section, nor shall any suit be brought to enforce the lien of any judgment against the
44 lands which have been conveyed by the judgment debtor to a grantee for value, unless the same be brought
45 within ~~10~~ five years from the due recordation of the deed from such judgment debtor to such grantee and
46 unless a notice of lis pendens shall have been recorded in the manner provided by § 8.01-268 before the
47 expiration of such ~~10-year~~ five-year period.

48 D. In computing the time, any time during which the right to sue out execution on the judgment is
49 suspended by the terms thereof, or by legal process, shall be omitted. Sections 8.01-230 et seq., 8.01-247
50 and 8.01-256 shall apply to the right to bring such action in like manner as to any right.

51 ~~The provisions of this section apply to judgments obtained after June 29, 1948, and to judgments~~
52 ~~obtained prior to such date which are not then barred by the statute of limitations, but nothing herein shall~~

53 ~~have the effect of reducing the time for enforcement of any judgment the limitation upon which has been~~
54 ~~extended prior to such date by compliance with the provisions of law theretofore in effect.~~

55 F. This section shall not be construed to impair the right of subrogation to which any person may
56 become entitled while the lien is in force, provided that he institutes proceedings to enforce such right
57 within five years after the same accrued, nor shall the lien of a judgment be impaired by the recovery of
58 another judgment thereon, or by a forthcoming bond taken on an execution thereon, such bond having the
59 force of a judgment.

60 G. ~~F.~~ Limitations on enforcement of judgments entered in the general district courts shall be
61 governed by § 16.1-94.1, unless an abstract of such judgment is docketed in the judgment book of a circuit
62 court. Upon the docketing of such judgment, the limitation for the enforcement of a district court judgment
63 is the same as for a judgment of the circuit court.

64 G. Any extension of the limitations of the right to enforce a judgment shall conform substantially
65 with the following form:

66 CERTIFICATE OF EXTENSION OF
67 LIMITATION OF RIGHT TO ENFORCE JUDGMENT LIEN

68 Place of Record _____

69 Date Judgment Docketed _____

70 Judgment Lien Book _____ Book Page _____

71 Name of Creditor(s) _____

72 Address of Creditor(s) _____

73 Phone number of Creditors(s) (if available) _____

74 Name of Debtor(s) _____

75 I/we, the judgment lien creditor(s), do hereby certify that the aforementioned judgment lien be
76 extended 10 years from the date of my/our endorsement upon this certificate.

77 Judgment Creditor/Attorney-in-Fact/Agent: _____

78 Commonwealth of Virginia

79 County/City of _____

80 Subscribed, sworn to and acknowledged before me by
81 _____ this _____ day of _____, 20_____

82 My Commission expires: _____

83 Notary Public: _____

84 **§ 8.01-458. From what time judgment to be a lien on real estate; docketing revived judgment.**

85 Every judgment for money rendered in this Commonwealth by any state or federal court or by
86 confession of judgment, as provided by law, shall be a lien on all the real estate of or to which the defendant
87 in the judgment is or becomes possessed or entitled, from the time such judgment is recorded on the
88 judgment lien docket of the clerk's office of the county or city where such land is situated; ~~provided,~~
89 ~~however, when a judgment is revived under the provisions of § 8.01-251, that such revived judgment shall~~
90 ~~not be a lien as prescribed in this section unless and until such judgment is again docketed as provided~~
91 ~~herein. In such event the lien shall be effective from the date of the original docketing.~~ Any judgment or
92 decree properly docketed under the provisions of this section shall, if the real estate subject to the lien of
93 such judgment has been annexed to or merged with an adjoining city subsequent to such docketing, be
94 deemed to have been docketed in the proper clerk's office of such city.

95 **§ 55.1-339. Release of deed of trust or other lien.**

96 A. As used in this section:

97 "Deed of trust" means any mortgage, deed of trust, or vendor's lien.

98 "Judgment lien" includes a judgment lien prescribed by § 8.01-458 but does not include any lien
99 in favor of the federal, state, or local government, or any political subdivision thereof.

100 "Lien creditor" and "creditor" shall be construed as synonymous and mean the holder, payee, or
101 obligee of a note, bond, or other evidence of debt and shall embrace the lien creditor or his successor in
102 interest as evidenced by proper endorsement or assignment, general or restrictive, upon the note, bond, or
103 other evidence of debt.

104 "Payoff letter" means a written communication from the lien creditor or servicer stating, at a
105 minimum, the amount outstanding and required to be paid to satisfy the obligation.

106 "RESA" means Chapter 10 (§ 55.1-1000 et seq.), Real Estate Settlement Agents.

107 "Satisfactory evidence of the payment of the obligation secured by the deed of trust or judgment
108 lien" means (i) any one of (a) the original canceled check or a copy of the canceled check, showing all
109 endorsements, payable to the lien creditor or servicer, as applicable, (b) confirmation in written or
110 electronic form of a wire transfer to the bank account of the lien creditor or servicer, as applicable, or (c)
111 a bank statement in written or electronic form reflecting completion of the wire transfer or negotiation of
112 the check, as applicable, and (ii) a payoff letter or other reasonable documentary evidence that the payment
113 was to effect satisfaction of the obligation secured or evidenced by the deed of trust or judgment lien.

114 "Satisfied by payment" includes obtaining written confirmation from the lien creditor that the
115 underlying obligation has a zero balance.

116 "Servicer" means a person or entity that collects loan payments on behalf of a lien creditor.

117 "Settlement agent" has the same meaning ascribed to it in § 55.1-1000, provided that a person shall
118 not be a settlement agent unless he is registered pursuant to § 55.1-1014 and otherwise fully in compliance
119 with the applicable provisions of RESA.

120 "Title insurance company" has the same meaning ascribed to it in § 38.2-4601, provided that the
121 title insurance company seeking to release a lien by the process described in subsection E issued a policy
122 of title insurance, through a title insurance agency or agent as defined in § 38.2-4601.1, for a real estate
123 transaction wherein the loan secured by the lien was satisfied by payment made by the title insurance
124 agency or agent also acting as the settlement agent.

125 B. 1. Except as provided in Article 3 (§ 55.1-346 et seq.), after full or partial payment or
126 satisfaction has been made of a debt secured by a deed of trust, vendor's lien, or other lien, or any one or
127 more obligations representing at least 25 percent of the total amount secured by such lien, but less than
128 the total number of the obligations so secured, or the debt secured is evidenced by two or more separate
129 written obligations sufficiently described in the instrument creating the lien, has been fully paid, the lien
130 creditor shall issue a certificate of satisfaction or certificate of partial satisfaction in a form sufficient for
131 recordation reflecting such payment and release of lien. This requirement shall apply to a credit line deed
132 of trust prepared pursuant to § 55.1-318 only when the obligor or the settlement agent has paid the debt in
133 full and requested that the instrument be released.

134 If the lien creditor receives notice from a settlement agent at the address identified in its payoff
135 statement requesting that the certificate be sent to such settlement agent, the lien creditor shall provide the
136 certificate within 90 days after receipt of such notice to the settlement agent at the address specified in the
137 notice received from the settlement agent.

138 If the notice is not received from a settlement agent, the lien creditor shall deliver, within 90 days
139 after such payment, the certificate to the appropriate clerk's office with the necessary fee for recording by
140 certified mail, return receipt requested, or when there is written proof of receipt from the clerk's office, by
141 hand delivery, electronic delivery via the clerk's electronic filing system, or delivery by a commercial
142 overnight delivery service or the United States Postal Service, and a receipt obtained.

143 If the lien creditor has already delivered the certificate to the clerk's office by the time it receives
144 notice from the settlement agent, the lien creditor shall deliver a copy of the certificate to the settlement
145 agent within 90 days of the receipt of the notice at the address for notification set forth in the payoff
146 statement.

147 ~~If~~ Except as provided for judgment lien creditors in § 8.01-454, if the lien creditor has not, within
148 90 days after payment, either provided the certificate of satisfaction to the settlement agent or delivered it
149 to the clerk's office with the necessary fee for filing, the lien creditor shall forfeit \$500 to the lien obligor.
150 No settlement agent or attorney may take an assignment of the right to the \$500 penalty or facilitate such
151 an assignment to any third party designated by the settlement agent or attorney. Following the 90-day
152 period, if the amount forfeited is not paid within 10 business days after written demand for payment is
153 sent to the lien creditor by certified mail at the address for notification set forth in the payoff statement,
154 the lien creditor shall pay any court costs and reasonable attorney fees incurred by the obligor in collecting
155 the forfeiture.

156 2. If the note, bond, or other evidence of debt secured by such deed of trust, vendor's lien, or other
157 lien referred to in subdivision 1 or any interest therein has been assigned or transferred to a party other
158 than the original lien creditor, the subsequent holder shall be subject to the same requirements as a lien
159 creditor for failure to comply with this subsection, as set forth in subdivision 1.

160 C. The certificate of satisfaction shall be signed by the creditor or his duly authorized agent,
161 attorney, or attorney-in-fact or any person to whom the instrument evidencing the indebtedness has been
162 endorsed or assigned for the purpose of effecting such release. An affidavit shall be filed or recorded with
163 the certificate of satisfaction by the creditor, or his duly authorized agent, attorney, or attorney-in-fact,
164 with such clerk, stating that the debt therein secured and intended to be released or discharged has been
165 paid to such creditor or his agent, attorney, or attorney-in-fact, who was entitled and authorized to receive
166 such debt when the debt was satisfied.

167 D. When the certificate of satisfaction has been signed and the affidavit required by subsection C
168 has been duly filed or recorded with the certificate of satisfaction with such clerk, the certificate of
169 satisfaction shall operate as a release of the encumbrance as to which such payment or satisfaction is
170 entered and, if the encumbrance is by deed of trust, as a reconveyance of the legal title as fully and
171 effectually as if such certificate of satisfaction were a formal deed of release duly executed and recorded.

172 E. Release of lien by settlement agent or title insurance company.

173 A settlement agent or title insurance company may release a deed of trust or judgment lien in
174 accordance with the provisions of this subsection (i) if the obligation secured by the deed of trust or
175 judgment lien has been satisfied by payment made by the settlement agent and (ii) whether or not the
176 settlement agent or title insurance company is named as a trustee under the deed of trust or otherwise has
177 received the authority to release the lien.

178 1. Notice to lienholder.

179 a. After or accompanying payment in full of the obligation secured by a deed of trust or judgment
180 lien, a settlement agent or title insurance company intending to release a deed of trust or judgment lien
181 pursuant to this subsection shall deliver to the lien creditor by certified mail or commercial overnight
182 delivery service or the United States Postal Service, and a receipt obtained, a notice of intent to release
183 the deed of trust or judgment lien with a copy of the payoff letter and a copy of the release to be recorded
184 as provided in this subsection.

185 b. The notice of intent to release shall contain (i) the name of the lien creditor, the name of the
186 servicer if loan payments on the deed of trust or judgment lien are collected by a servicer, or both names;

187 (ii) the name of the settlement agent; (iii) the name of the title insurance company if the title insurance
188 company intends to release the lien; and (iv) the date of the notice. The notice of intent to release shall
189 conform substantially to the following form:

190 NOTICE OF INTENT TO RELEASE

191 Notice is hereby given to you concerning the deed of trust or judgment lien described on the
192 certificate of satisfaction, a copy of which is attached to this notice, as follows:

193 1. The settlement agent identified below has paid the obligation secured by the deed of trust or
194 judgment lien described herein or obtained written confirmation from you that such obligation has a zero
195 balance.

196 2. The undersigned will release the deed of trust or judgment lien described in this notice unless,
197 within 90 days from the date this notice is mailed by certified mail or commercial overnight delivery
198 service or the United States Postal Service, and a receipt obtained, the undersigned has received by
199 certified mail or commercial overnight delivery service or the United States Postal Service, and a receipt
200 obtained, a notice stating that a release of the deed of trust or judgment lien has been recorded in the clerk's
201 office or that the obligation secured by the deed of trust or judgment lien described herein has not been
202 paid, or the lien creditor or servicer otherwise objects to the release of the deed of trust or judgment lien.

203 Notice shall be sent to the address stated on this form.

204 (Name of settlement agent)

205 (Signature of settlement agent or title insurance company)

206 (Address of settlement agent or title insurance company)

207 (Telephone number of settlement agent or title insurance company)

208 (Virginia RESA registration number of settlement agent at the time the obligation was paid or
209 confirmed to have a zero balance)

210 2. Certificate of satisfaction and affidavit of settlement agent or title insurance company.

211 a. If, within 90 days following the day on which the settlement agent or title insurance company
212 mailed or delivered the notice of intent to release in accordance with this subsection, the lien creditor or
213 servicer does not send by certified mail or commercial overnight delivery service or the United States

214 Postal Service, and a receipt obtained, to the settlement agent or title insurance company a notice stating
215 that a release of the deed of trust or judgment lien has been recorded in the clerk's office or that the
216 obligation secured by the deed of trust or judgment lien has not been paid in full or that the lien creditor
217 or servicer otherwise objects to the release of the deed of trust or judgment lien, the settlement agent or
218 title insurance company may execute, acknowledge, and file with the clerk of court of the jurisdiction in
219 which the deed of trust or judgment lien is recorded a certificate of satisfaction, which shall include (i) the
220 affidavit described in subdivision 2 b and (ii) a copy of the notice of intent to release that was sent to the
221 ~~lender~~ lien creditor, the servicer, or both. The certificate of satisfaction shall include the settlement agent's
222 RESA registration number, issued by the Virginia State Bar or the Virginia State Corporation
223 Commission, that was in effect at the time the settlement agent paid the obligation secured by the deed of
224 trust or judgment lien or obtained written confirmation from the lien creditor that such obligation has a
225 zero balance. The certificate of satisfaction shall note that the individual executing the certificate of
226 satisfaction is doing so pursuant to the authority granted by this subsection. After filing or recording the
227 certificate of satisfaction, the settlement agent or title insurance company shall mail a copy of the
228 certificate of satisfaction to the lien creditor or servicer. The validity of a certificate of satisfaction
229 otherwise satisfying the requirements of this subsection shall not be affected by the inaccuracy of the
230 RESA registration number placed thereon or the failure to mail a copy of the recorded certificate of
231 satisfaction to the lien creditor or servicer and shall nevertheless release the deed of trust or judgment lien
232 described therein as provided in this subsection.

233 b. The certificate of satisfaction used by the settlement agent or title insurance company shall
234 include an affidavit certifying (i) that the settlement agent has satisfied the obligation secured by the deed
235 of trust or judgment lien described in the certificate, (ii) that the settlement agent or title insurance
236 company possesses satisfactory evidence of payment of the obligation secured by the deed of trust or
237 judgment lien described in the certificate or written confirmation from the lien creditor that such obligation
238 has a zero balance, (iii) that the lien of the deed of trust or judgment lien may be released, (iv) that the
239 person executing the certificate is the settlement agent or the title insurance company or is duly authorized
240 to act on behalf of the settlement agent or title insurance company, and (v) that the notice of intent to

241 release was delivered to the lien creditor or servicer and the settlement agent or title insurance company
242 received evidence of receipt of such notice by the lien creditor or servicer. The affidavit shall be
243 substantially in the following form:

244 AFFIDAVIT OF SETTLEMENT AGENT OR TITLE INSURANCE COMPANY

245 The undersigned hereby certifies that, in accordance with the provisions of § 55.1-339 of the Code
246 of Virginia of 1950, as amended and in force on the date hereof (the Code), (a) the undersigned is a
247 settlement agent or title insurance company as defined in subsection A of § 55.1-339 of the Code or a duly
248 authorized officer, director, member, partner, or employee of such settlement agent or title insurance
249 company; (b) the settlement agent has satisfied the obligation secured by the deed of trust or judgment
250 lien; (c) the settlement agent or title insurance company possesses satisfactory evidence of the payment of
251 the obligation secured by the deed of trust or judgment lien described in the certificate recorded herewith
252 or written confirmation from the lien creditor that such obligation has a zero balance; (d) the settlement
253 agent or title insurance company has delivered to the lien creditor or servicer in the manner specified in
254 subdivision E 1 of § 55.1-339 of the Code the notice of intent to release and possesses evidence of receipt
255 of such notice by the lien creditor or servicer; and (e) the lien of the deed of trust or judgment lien is
256 hereby released.

257 _____ (Authorized signer)

258 3. Effect of filing.

259 When filed or recorded with the clerk's office, a certificate of satisfaction that is executed and
260 notarized as provided in this subsection and accompanied by (i) the affidavit described in subdivision 2 b
261 and (ii) a copy of the notice of intent to release that was sent to the lender, lien creditor, or servicer shall
262 operate as a release of the encumbrance described therein and, if the encumbrance is by deed of trust, as
263 a reconveyance of the legal title as fully and effectively as if such certificate of satisfaction were a formal
264 deed of release duly executed and recorded.

265 4. Effect of wrongful or erroneous certificate; damages.

266 a. The execution and filing or recording of a wrongful or erroneous certificate of satisfaction by a
267 settlement agent or title insurance agent does not relieve the party obligated to repay the debt, or anyone

268 succeeding to or assuming the responsibility of the obligated party as to the debt, from any liability for
269 the debt or other obligations secured by the deed of trust or judgment lien that is the subject of the wrongful
270 or erroneous certificate of satisfaction.

271 b. A settlement agent or title insurance agent that wrongfully or erroneously executes and files or
272 records a certificate of satisfaction is liable to the lien creditor for actual damages sustained due to the
273 recording of a wrongful or erroneous certificate of satisfaction.

274 c. The procedure authorized by this subsection for the release of a deed of trust or judgment lien
275 shall constitute an optional method of accomplishing a release of a deed of trust or judgment lien secured
276 by property in the Commonwealth. The nonuse of the procedure authorized by this subsection for the
277 release of a deed of trust or judgment lien shall not give rise to any liability or any cause of action
278 whatsoever against a settlement agent or any title insurance company by any obligated party or anyone
279 succeeding to or assuming the interest of the obligated party.

280 5. Applicability.

281 a. The procedure authorized by this subsection for the release of a deed of trust may be used to
282 effect the release of a deed of trust after July 1, 2002, regardless of when the deed of trust was created,
283 assigned, or satisfied by payment made by the settlement agent. The procedure authorized by this
284 subsection for the release of a judgment lien may be used to effect the release of such judgment lien after
285 July 1, 2021, regardless of when the judgment lien was created, assigned, or satisfied by payment made
286 by the settlement agent.

287 b. This subsection applies only to transactions involving the purchase of or lending on the security
288 of real estate located in the Commonwealth that is either (i) unimproved real estate with a lien to be
289 released of \$1 million or less or (ii) real estate containing at least one but not more than four residential
290 dwelling units.

291 c. The procedure authorized by this subsection applies only to the full and complete release of a
292 deed of trust or judgment lien. Nothing in this subsection shall be construed to authorize the partial release
293 of property from a deed of trust or judgment lien or otherwise permit the execution or recordation of a
294 certificate of partial satisfaction.

295 2. That the provisions of this act, except for the provisions amending subsections B and G of § 8.01-
296 251 of the Code of Virginia, as amended by this act, shall become effective on January 1, 2022.

297 3. That the provisions of this act amending subsections B and G of § 8.01-251 of the Code of Virginia,
298 as amended by this act, shall become effective in due course, and a judgment lien creditor or his
299 duly authorized attorney-in-fact or agent may record a Certificate of Extension of Limitation of
300 Right to Enforce Judgment Lien for judgment liens dated prior to July 1, 2021, beginning on July
301 1, 2021.

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